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and Alcatel-Lucent, S.A.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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SANDISK CORPORATION,	) Case No. C 07-03618 JF
Plaintiff,	)
	)
vs.	) **DECLARATION OF DR.**
	) **NATHANIEL POLISH**
LUCENT TECHNOLOGIES INC. and	)
ALCATEL-LUCENT, S.A.,	)
	)
Defendants.	)

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2 I, Nathaniel Polish, hereby declare as follows:

3   1.   For over twenty years, I have run a computer technology development firm that I co-

4 founded, called Daedalus Technology Group. My primary business activity is the development of

5 computer-related products. This activity involves understanding the business objectives of

6 customers, designing products to suit their needs, and supervising the building, testing, and

7 deployment of these products. I develop hardware and software as well as supervise others who do

8 so. Attached as Exhibit A is my Professional Biography, which describes my education,

9 professional work, and awards.

10   2.   I am familiar with the technology disclosed and claimed in U.S. Patent No. 5,341,457

11 (the "'457 patent") and U.S. Reissue Patent No. Re 39,080 (the "'080 patent").

12   3.   I understand that SanDisk offers a series of digital audio players for sale to consumers

13 and markets them as MP3 players.

14   4.   I was provided two models of SanDisk MP3 players (the e250 and c250 models) in

15 unopened consumer packaging for evaluation.

16   5.   The SanDisk MP3 player box contains the player itself, headphones, a cable for

17 connecting the player to a computer, a quick start guide and a CD that includes encoding software

18 and a User Guide.

19   6.   When the player is turned on, the owner has the option of selecting Music from a

20 number of menu options.

21   7.   Selecting the music option brings up an additional menu with topics such as Play All,

22 Artists, Albums, Songs, Genres, Playlists, My Top Rated, Recordings, Rhapsody Channels, and

23 Music Options.

24   8.   Selecting the Play All option results in play of the first of a number of audio tracks

25 pre-loaded on the player. Selecting any of the Artists, Albums, Songs, or Genres options also lead

26 the user to the same pre-loaded audio tracks.

27   9.   I investigated the format of the included audio files on both SanDisk MP3 players and

28 determined that all of the included audio files are encoded into the MP3 format.

1   10.   The Rhapsody Channel option directs the user to connect the player to a computer in

2   order to transfer a Rhapsody Channel.

3   11.   Choosing Music Options allows the user to modify the way in which audio files are

4   played (for instance, randomly or in some particular order).

5   12.   The product documentation accompanying the SanDisk MP3 players informs the user

6   that SanDisk MP3 players support a variety of audio file types, including MP3, AAC, RAX, WMA,

7   and secure WMA.

8   13.   SanDisk directs users of SanDisk MP3 players to convert audio files in formats other

9   than MP3, AAC, RAX, WMA, and secure WMA to one of the supported formats by using Windows

10   Media Player 10 or 11 or, alternatively, loading the included Best Buy Digital Music Store Media

11   Player onto their computer and then using the Best Buy product to convert the files.

12   14.   I used both Windows Media Player 10 and 11 to "rip" or encode music from an audio

13   CD into MP3 format. I transferred the MP3 files to the SanDisk MP3 players and played the audio

14   file. The SanDisk MP3 players decoded audio files encoded in MP3 format by both Windows

15   Media Player 10 and 11.

16   15.   I also loaded the included Best Buy Digital Music Store Media Player onto my

17   computer and used the Best Buy product to "rip" or encode music from an audio CD. The default

18   format for encoding the audio track was MP3. I transferred the MP3 files to the SanDisk MP3

19   players and played the audio file. The SanDisk MP3 players decoded audio files encoded in MP3

20   format by the Best Buy Digital Music Store Media Player.

21   16.   SanDisk also informs users that they may use a variety of other music software

22   programs to encode and transfer audio files to SanDisk MP3 players and directs users to SanDisk's

23   website for further information.

24   17.   I reviewed SanDisk's MP3 player website. Videos on that website provide users with

25   directions on how to "rip" or encode audio CDs for transfer to SanDisk MP3 players using a variety

26   of software packages including Napster, Yahoo! Music Jukebox, Windows Media Player 10 and 11

27   and Rhapsody.

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1   18.   Audio files may be encoded into MP3 format using these software packages,

2 transferred and stored on the player in MP3 format, and the MP3 files decoded and played by

3 SanDisk MP3 players.

4   19.   In my experience, MP3 players, such as the SanDisk MP3 players, will include either

5 a digital signal processor ("DSP") with decoding software, or a computer chip with decoding

6 software to decode audio files encoded using, for instance, the MP3 format.

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8   I declare under penalty of perjury under the laws of the United States that the foregoing is

9 true and correct and that this declaration was executed on this 9th day of November 2007.

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12   _____

13   Nathaniel Polish

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